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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/628,060	07/25/2003	Sarah Maillefer	2652	4150

7590 11/28/2007  
STRIKER, STRIKER & STENBY  
103 East Neck Road  
Huntington, NY 11743

EXAMINER
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VAKILI, ZOHREH

ART UNIT	PAPER NUMBER
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1614

MAIL DATE	DELIVERY MODE
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11/28/2007

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/628,060	<b>Applicant(s)</b> MAILLEFER ET AL.	
	<b>Examiner</b> Zohreh Vakili	<b>Art Unit</b> 1614	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 28 August 2007.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-27 is/are pending in the application.
- 4a) Of the above claim(s) 1-18 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 19-27 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All    b) ☐ Some \* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                                | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

### **DETAILED ACTION**

**Claims 1-27 are presented for examination.**

Applicant's election of Group II drawn to a method for shaping or styling a hairstyle in the reply filed on August 28, 2007 is acknowledged. Because applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election without traverse (MPEP § 818.03(a)).

Claims 1-18 are withdrawn from consideration as being directed to non-elected subject matter. Claims 19-27 read on the elected invention and are herein examined on the merits.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under

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37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Claims 19-27 are rejected under 35 U.S.C. 103(a) as being unpatentable over Flemming et al. (US Patent No. 5885561), taken with Emmerling (US Patent No. 6730290 B2), in view of Yoshida et al. (US Patent 6649154 B1), taken with Garces Garces (US Patent No. 6733790 B1), and further in view of Carballada et al. (US Patent No. 6585965 B1).

Flemming et al. teach a hair treatment compositions such as hair oil, gel or hair wax (see Col. 3, lines 33-34). The composition can be in the form of an aqueous solution or emulsion and in thickened form on an aqueous basis, especially as a cream, gel or paste (see col. 4, lines 52-56). The curled hair can then be subjected to an oxidative after treatment. Then the hair is rinsed with water, set in a hair do and subsequently dried (see col. 4, lines 60-63). The composition can include emulsifiers in amount of from 0.5 to 5% by weight (see col. 5, lines 51-58) The composition further contains 0.20g hydrogenated castor oil, ethoxylated with 45 mol ethylene oxide, 12 g ethanol, and 86 g water (see col. 13, Example 32).

Emmerling et al. teach a composition for treating human hair for temporary styling which should give a good hold without impairing the healthy appearance of the hair. A good hold without impairing the healthy appearance of the hair, for example its shine, may be achieved, by hairsprays and hair waxes (see col. 1, lines 8-18). The

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preparations contains 0.5%- 5% of emulsifier (see col. 4, lines 51-54). The method for treating the hair contains wax selected from the group consisting of carnauba wax, and candelilla wax (see col. 9, claim 4).

Yoshida et al. teaches in foamy setting preparation for hairdressing cosmetic 88 percent by weight of water is used (see col. 16, example 16). For gel having hairdressing effect 73.4 percent by weight water is used (see col. 16, example 17). For liquid setting preparation 93 percent by weight water is used (see col. 16, example 18).

Garces Garces teaches suitable organic solvents such as monohydric and/or polyhydric alcohols containing 1 to 6 carbon atoms and preferably 1 to 4 carbon atoms. Preferred alcohols are ethanol, propane-1,2-diol, glycerol and mixtures thereof. The product preferably contain 2 to 20 percent by weight and more preferably 5 to 15 percent by weight of ethanol or a mixture of ethanol and propane-1,2-diol or, more particularly, of ethanol and glycerol (see col. 17, line 65, through col. 18 line 5) and water such that the water is added and not removed therefore being incorporated into the ultimate product (see example 1) . Such solvents reasonably act as carriers because by their nature are fluid phase (liquid, gas, or plasma) that dissolves a solid, liquid, or gaseous solute, resulting in a solution.

Carballada et al. teach of a hair care compositions. The invention is to provide improved hair care compositions. It is a more specific object of the invention to provide hair care compositions which provide desirable wet and/or dry hair **restyling** performance. It is a further object of the invention to provide such compositions which also provide good hair look and feel. It is yet another object of the present invention to

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provide compositions which provide desirable wet and/or dry hair restyling performance and good hair look and feel for extended periods of time without the need to reapply the composition or apply any other styling aids. It is a further object of the present invention to provide leave-on hair styling compositions which do not feel unduly sticky or stiff after the composition has been applied and allowed to dry on the hair (see col.2, lines 20-35)

It would have been obvious given the motivation above to one of ordinary skill in the art, to have combined the teachings of the above mentioned references for the reasons cited above. Each reference teaches a hair care composition for styling and restyling of the hair whether the hair is wet or dry. Each component of the composition and its usage is taught in the references. Therefore, one of ordinary skill in the art would have been motivated to use the teachings of the above mentioned references and produce a hair wax for styling and restyling of the hair which is more sticky in the temporary phase, which is an obvious characteristic of many hair wax or hair gel products. Upon application most gels are more sticky and gradually after application the stickiness is decreased, as described by Carballada et al. the composition does not feel sticky or stiff after it has been applied to the hair. As combined, the cited references result in the claimed invention.

One skilled in the art would have been motivated to combine the teachings of the above references considering that it is generally prima facie obvious to combine two or more compositions each of which is taught by the prior art to be useful for the same

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purpose, in order to form a composition which is to be used for the very same purpose. The idea for combining them flows logically from their having been used individually in the prior art. As shown by the recited teachings, the instant claims define nothing more than the concomitant use of a hair wax composition and its application. It would follow that the recited claims define prima facie obvious subject matter. In re Kerhoven, 626 F.2d 848, 205 USPQ 1069 (CCPA 1980).

It would have been obvious to one of ordinary skill in the art to use the teachings of the above references to generate a method and formulation for a hair care composition. Finally, one would have a reasonable expectation of success given that the above mentioned references provide a detailed blueprint for formulating a hair wax composition for styling the hair in its desired shape, and the steps of which are routine to one of ordinary skill in the art.

Thus in the absence of evidence to the contrary, the invention of claims 19-27 would have been prima facie obvious as a whole to one of ordinary skill in the art at the time the invention was made.

### **Conclusion**

No claim is allowed.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Zohreh Vakili whose telephone number is 571-272-3099. The examiner can normally be reached on 8:30-5:00 Mon.-Fri.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ardin Marschel can be reached on 571-272-0718. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Zohreh Vakili

Patent Examiner  
1614

November 9, 2007

 11/25/07  
ARDIN H. MARSCHEL  
SUPERVISORY PATENT EXAMINER